



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170350

PRELIMINARY RECITALS

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 05, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner has a son [REDACTED]. Petitioner did not have an open benefits case with the agency at any time relevant to this matter. Petitioner resided for at least part of 2013 and 2014 at [REDACTED] Racine.

3. On September 3, 2013, [REDACTED] contacted the agency to apply for FS benefits. He reported to the agency that he had been kicked out of his mother's house one month prior. According to the agency's case comments, [REDACTED] reported that he stays "where ever he can." FS benefits were approved for [REDACTED] for a household size of one.
4. On September 18, 2013, Racine Police responded to a call involving [REDACTED]. [REDACTED] reported an address of [REDACTED] Racine as his address.
5. On October 23, 2013, in a matter in circuit court, [REDACTED] reported a change in address to [REDACTED] Racine. The court notes indicate that [REDACTED] had previously reported an address on [REDACTED] Racine.
6. On December 3, 2013, [REDACTED] notified the court of an address change to [REDACTED] Racine.
7. On April 16, 2014, [REDACTED] applied for BC+ and reported his address as [REDACTED] Racine.
8. On May 19 and 20, 2014, [REDACTED] had contact with the Racine Police Department and reported his address as [REDACTED] Racine.
9. On June 6, 2014, [REDACTED] was charged in Racine County Circuit Court. He reported an address of [REDACTED] Racine to the court.
10. On June 13, 2014, the Petitioner signed a notarized statement asserting that [REDACTED] does not live with her, that he is homeless and that she allows him to use her address as a mailing address.
11. On June 20, 2014, July 4, 2014, July 9, 2014, and October 1, 2014, [REDACTED] had contacts with the Racine Police Department. On each occasion, he reported his address as [REDACTED] Racine to the police.
12. On November 5, 2014, a paternity action was filed with [REDACTED] as a party. He reported his address as [REDACTED] in Racine to the court.
13. On June 25, 2015, [REDACTED] obtained employment at [REDACTED]. He reported his address as [REDACTED] Racine.
14. On November 5, 2015, the agency issued FS Overpayment Notices and worksheets to [REDACTED] informing him of the agency's intent to recover an overissuance of FS benefits in the total amount of \$2,875 for the periods of September 3, 2013 – August 31, 2014 and September 11, 2014 – December 31, 2014.
15. The Petitioner filed an appeal with the Division of Hearings and Appeals on November 23, 2015.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, the agency alleges that [REDACTED] and the Petitioner lived together at [REDACTED] during the period of September 3, 2013 – December 31, 2014. The Petitioner asserts that [REDACTED] never lived with her during that period but that he was homeless and used her address as his mailing address.

The court documents and police records presented by the agency do demonstrate that [REDACTED] at least used the Petitioner's address as his mailing address. I note that in October, 2013 and December, 2013, [REDACTED] reported a couple of address changes to the court. Specifically on October 23, 2013 the court changed his address from [REDACTED] to [REDACTED]. On December 3, 2013, the court changed his address to [REDACTED].

The Petitioner testified that [REDACTED] has not lived with her since 2013 but she did let him use her address for mailing purposes and for home visits from his probation/parole officer. The agency's case note from September 3, 2013 actually supports the Petitioner's testimony that [REDACTED] has not lived with her since 2013 when [REDACTED] reported to the agency that the Petitioner had kicked him out of her home in approximately August, 2013.

Based on the conflicting evidence of where [REDACTED] lived from September, 2013 – December, 2013, I find the agency has not met its burden of proving that [REDACTED] lived with the Petitioner during that period of time.

As for the remainder of the overpayment period, the agency did not present evidence to demonstrate where the Petitioner was living. However, the Petitioner did concede at the hearing that she lived at [REDACTED] since sometime in 2013 and that she had just recently moved on January 1, 2016.

Overall, I found the Petitioner's testimony to be credible that [REDACTED] was using her address as a mailing address. There is evidence that [REDACTED] moved frequently as supported by the changes he reported to the circuit court. Petitioner's testimony is consistent with her notarized produced by the agency and signed by the Petitioner in June, 2014 indicating that [REDACTED] did not live her but that she allowed him to use her address as a mailing address.

I also conclude that the agency has not met its burden because the agency did not submit any overpayment notices and worksheets issued to the Petitioner. The agency's exhibits only included the notices and worksheets issued to [REDACTED]. Without submission of notices and worksheets that may have been issued to the Petitioner, I cannot make a determination if the Petitioner received proper notice and if the overpayment was properly calculated.

Based on the evidence presented, I conclude the evidence is not sufficient to demonstrate that the Petitioner was part of [REDACTED]'s household during the alleged overpayment period. I note that this decision does not impact the overpayment action against [REDACTED] or any appeal [REDACTED] may have filed regarding the overpayment action against him.

CONCLUSIONS OF LAW

The evidence is not sufficient to demonstrate that the Petitioner was part of [REDACTED]'s household during the alleged overpayment period.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind any overpayment claims and cease any collection actions against the Petitioner related to the allegations that she and [REDACTED] lived together during the period of September, 2013 – December, 2014. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 21, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability